



ENVIRONMENTAL LAW & POLICY CENTER  
ILLINOIS INDIANA MICHIGAN MINNESOTA OHIO WISCONSIN

February 9, 2004

Megan Wallace  
Indiana Dept. of Environmental Management

Dear Megan:

Attached are proposed revisions to the Section 7 of the Antidegradation regulations. You may distribute the draft to everyone but please also distribute this letter, which seeks to explain a number of the changes.

This attachment does not try to show the history of the various drafts. There have been too many drafts to follow them all. Basically we started with the draft I sent out before the January 21 meeting and made changes based on the January 21 discussions and discussions that some of us (including Neil Kagan, Bowden Quinn, Charlotte Read and Rae Schnapp) have had after January 21.

I think all the significant changes from the earlier draft are as follows:

7(a) - "Reissued" was deleted based on the explanation given that Indiana does not use that term.

7(b)(1) - Language was added that was discussed at the meeting regarding mass and concentration in the effluent and the receiving water. Also, wording was changed slightly as to pollutants to be discussed.

7(b)(2) and (3) are largely unchanged from the prior draft.

7(b) (4) - Minor changes are made here but this section requires a bit more discussion.

7(c) - The most significant proposed change is made here. Basically, the environmental groups, while recognizing that in most cases it will be fairly easy for POTWs to prove that their proposed new or increased discharge is necessary to accommodate important economic or social development, do not believe that a exception from showing such proof should be made in the rules.

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There are a few reasons why POTWs should not be exempted. First, the applicable federal regulation, 40 CFR 131.12 (a)(2), does not provide for any exception for POTWs. There is a serious risk that an Indiana rule that provided an exemption would be disapproved. Moreover, as was discussed January 21, there are a number of situations, difficult to define in advance, in which a full economic and social demonstration should be made by POTWs. Further, given that 7(c)(1) has been made more generally applicable and flexible in the IDEM draft that was presented January 21 (and in the attached draft), there seems no need explicitly to treat POTWs in (c) separately.

In addition, wording changes to 7 (c)(1) and (2) are proposed that we think make the discussion of what should be shown more clear.

7(d) - Old 7(d) has been deleted because POTWs are now treated, with other dischargers, in (c). New 7(d) is old 7(e) unchanged except for minor wording changes. Also, it is proposed that the Commissioner quantify increased risk to aquatic life.

7(e)[old 7(f)] has been altered in this draft. We propose to specify two circumstances in which a public meeting “shall” be held on an antidegradation application although generally the commissioner “may” decide to have a meeting.

7(f) [old 7(e)] (1) has been reworded for clarity and to bring the language into line with what we believe was the consensus on January 21.

7(f)(3) has been changed by replacing “may” with “shall”. “Shall” is appropriate in this case and may have been what was originally intended.

A new (f)(4) was added to refer to the requirements of proposed Section 3.

7(g) is identical to old 7(h)

7(h) [old 7(i)] has been modified to mention the requirements of 327 IAC 5-2-11.7.

In various places in this draft the word “significant” is in brackets. This is done because the significance concept as used in Section 6 of the draft requires further discussion.

We look forward to discussing our proposals for Section 7, “significance” and other matters at the meeting to be held February 18.

Sincerely,

A handwritten signature in black ink, appearing to read 'Albert Ettinger', with a stylized flourish at the end.

Albert Ettinger  
Senior Staff Attorney